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IN THE

Supreme Court of the United States

October Term 1914.

No. 858.

THE JAMES CLARK DISTILLING COMPANY,
Appellant,

vs.

THE AMERICAN EXPRESS COMPANY AND THE STATE OF WEST VIRGINIA,
Appellee.

BRIEF FOR THE STATE OF WEST VIRGINIA, APPELLEE.

The construction of the West Virginia law and the State Prohibition amendment of West Virginia, have been fully discussed in a very able brief filed in this case by Fred. O. Blue, counsel for the State of West Virginia. In the brief which we submit herewith we confine ourselves to two propositions which are involved in this case:

First: Has the State of West Virginia the authority to make the place of delivery the place of sale for both **inter** and **intra** state shipments?

Second: Is the Webb-Kenyon law constitutional?

THE STATE OF WEST VIRGINIA HAS LEGISLATIVE AUTHORITY TO ENACT A LAW MAKING THE PLACE OF DELIVERY THE PLACE OF SALE.

It is a well settled proposition that so far as intra state shipments of liquor are concerned, the state may enact laws making the place of delivery the place of sale. The Supreme Court so held in the case of Louisville and Nashville Railroad vs. Cook Brewing Company, 223 U. S., p. 70, in the following language:

> "Valid as the Kentucky legislation doubtless was as a regulation in respect to intrastate shipment of such articles, it was most obviously never an effective enactment insofar as it undertook to regulate interstate shipments to dry points."

See also:

> State vs. Herring, 145 N. C., 418.
> Hart vs. State, 87 Miss., 171, etc.

Counsel for appellant rely largely on certain decisions in Kentucky to sustain their proposition that the place of delivery cannot be made the place of sale when the liquor is shipped for the personal use of the consignee, quoting Comm. vs. Campbell, 133 Ky., 50; Adams Express Co. vs. Comm., 154 Ky., 462, and several other Kentucky cases.

These cases were decided upon the authority of certain provisions of the Constitution of Kentucky that perhaps will not be found in the Constitution of any other state. It was shown by Judge Barker, that in the Constitutional Convention, there were two forces, one to banish liquor from the state and on the other hand those who were en-

gaged in the business of manufacturing and selling liquor and who advocated the utmost freedom for the citizens with reference to the sale and use of liquor. It was evident that the manufacturers and dealers controlled the situation because there was embodied in the Constitution a section providing that the General Assembly should not pass local or special acts to provide a means of taking the sense of the people of any city, town, district, precinct or county whether they wish to authorize, regulate or prohibit therein the sale of vinous, spirituous or malt liquor or alter liquor laws; it being further provided that the General Assembly shall by general law provide a means for that purpose. It was no doubt the idea of the manufacturers that it would be much easier to obtain a local option law for a smaller subdivision than it would for the whole state, and thus they would retard any restrictive legislation. Under these sections of the Constitution, it was held that the Convention did not intend to leave it in the power of the legislature upon its own motion to prohibit the possession of liquor by the citizen. Barker, Justice, said:

> "We cannot believe that the framers of the constitution intended thus carefully to take from the Legislature power to regulate the sale of liquor and leave with that department of the state government greater power of prohibiting the possession or ownership of liquor."

If the court of last resort in Kentucky has construed their Constitution correctly, then there is a clear distinction between the cases which might arise in Kentucky and the case under the West Virginia law. In West Virginia the people have by their constitutional amendment made clear their intention to prohibit the manufacture and sale of liquor except as provided in the amendment

and by law. While we do not agree with the conclusions of the Court of Appeals of Kentucky in their construction of the Constitution, yet if their construction of the Constitution was correct it would be no authority for holding that the law making the place of delivery the place of sale in a state like West Virginia, would be unconstitutional.

West Virginia has a Constitution concerning whose purpose and intent to prohibit the manufacture and sale of liquor, there can be no doubt. There is no limitation on the Legislature in accomplishing that purpose. It is true the Kentucky court, after deciding the point above referred to, went into the consideration of the "History of our state from its beginning," and also referred to its Bill of Rights declaring the inalienable rights possessed by citizens and, "that the absolute and arbitrary power over the lives, liberty and property of freedom exists nowhere in the republic, not even in the largest majority." Construing all these provisions in the Constitution supported by some certain expressions in Blackstone's Commentaries and in a work on Liberty by John Stewart Mill, the court discussed sumptuary legislation in general. We respectfully submit that the right to sell liquor, or use liquor is not one of the inalienable rights guaranteed to a citizen under the Constitution of the United States, or of a state like West Virginia.

Crowley vs. Christensen, 137 U. S., 86.
Mugler vs. Kansas, 123 U. S., 623.
Purity Extract Co. vs. Lynch, 226 U. S., 201.
See also pages 11 to 28 of brief in case 271.

It is easily conceivable that other courts under different conditions than that which obtains in Kentucky,

would not agree with the view of the Kentucky Court of Appeals. Each state has the right to determine for itself what its police powers shall embrace, subject of course to the Constitution of the state and that of the United States.

CASES CITED BY APPELLANT DISTINGUISHED.

In appellant's brief, pages 35 and 36, it is claimed that the rule of the Kentucky cases is followed in State vs. Williams, 146 N. C., 618; Eidge vs. Bessemer, 164 Ala., 599; Comm. vs. Smith, 163 Ky., 227, and State vs. Gilman, 33 W. Va., 146. We respectfully deny that these cases are authority for the contention made against the West Virginia law.

These cases were discussed by the Supreme Court of Mississippi in the case of Phillips vs. State, 67 Sou. Rep., 651. In respect to the Alabama case it held that the dissenting opinion therein of Justice McClellan, concurred in by two other judges, presented the sounder view, and it was adopted as the law of the case by the Mississippi court.

In reference to the case of State vs. Gilman, supra, it said:

> "The Supreme Court of West Virginia was passing upon the validity of a statute of that state which denounced as a misdemeanor the keeping in possession of spirituous liquors of another by any person not the owner who had not obtained a license therefor. The decision went off upon the court's interpretation of the state Constitution, which declared, 'laws may be passed regulating or prohibiting the sale of intoxicating liquors.' The court invoked the maxim 'Expressio unius est exclusio alterius,' holding that the statute not having reference to the prohibition or sale of liquors, the legislature was without power to pass the statute. The court also held that the statute could not be upheld as coming

within the police power of the state. We do not consider this decision of much value in this case, because the statute there reviewed is radically and substantially different from the statute we are considering and besides the question before the court was complicated by the Constitution of West Virginia."

(This decision was rendered before the new Constitution was adopted.)

Of the North Carolina case, State vs. Williams, supra, after quoting the syllabus as to the point decided, it said:

"This case was also decided by a divided court. We mention this fact for the purpose of showing that decisions along this line have usually found some judge of the court who dissents. We think the dissenting opinion in this case propounds a question hard to answer, and we quote the same, because, in our opinion it demonstrates the fallacy of the court's reasoning, viz.:

" 'In limiting each person to a half gallon per day for his own use (for the law permits no sale), the Legislature was not niggardly. Besides, if the manufacturer, though exclusively for one's own use and out of one's own apples and peaches, in the county can be forbidden by statute without breaking the Constitution, why cannot the importation of the same article across the county line, in a greater quantity than a half gallon per day, even for one's own use, be prohibited by the same power? The truth is that, the Legislature having jurisdiction of the subject, the limitations upon its exercise rest in the wisdom and sound judgment of the Legislature, subject only to review by the people, not by the courts.' "

It may also be said that the decision in this case was itself complicated by a provision in the Constitution of North Carolina, which was quoted and relied upon in Judge Connor's opinion. Said provision was that "among the inalienable rights of all men are life, liberty

and the enjoyment of **the fruits of their own labor**, and the pursuit of happiness, of which they cannot be deprived but by the law of the land," and thereupon said:

> "If either the spirits, wine or beer, which the defendant had on the tenth day of July, 1907, was his property, it was by virtue of the constitutional guarantee **that he shall enjoy the fruits of his own labor and pursue his own happiness**, entitled to carry it with him wherever he went and apply it to his own use in such manner as he saw fit, unless prohibited by some law enacted in accordance with and in the exercise of the power conferred upon the legislature."

> Again: "Assuming that the wine or spirits described in the bill of indictment was the defendant's property, **the fruits of his labor**, he was entitled to carry it with him wherever he went, unless in doing so he injuriously affected the public morals, health or safety, or that his doing so was reasonably related to the sale of intoxicating liquor, which is the thing prohibited in Brook county, as to come within the police power. It is no answer to his contention to say that if spirits, he would probably risk it, or if wine, permit his familty to use it for domestic purposes, because the law does not prohibit him from doing either."

> Eidge vs. Bessemer, 164 Ala., 599.

(a) This case should be studied in connection with the case of Williams vs. State, 179 Ala., 50, in which the opinion was written by the same judge who wrote the decision in Eidge vs. Bessemer, and in which the Bessemer case is explained and limited.

It should also be studied in connection with the decision of the Supreme Court of Mississippi in State vs. Phillips, 67 Sou. Rep., 651, in which many authorities are cited showing that the great weight of authority was against the decision of the majority of the court, and in support of the dissenting opinion of Justice McClellan, concurred in by Justices Simpson and Denson.

In the first place the Alabama case did not involve the question as to whether or not the state of Alabama by its legislature could prevent a citizen from owning or possessing liquors for his own use, or can restrict the quantity of liquor he might own or possess for such use, or for other purposes. The question involved was the validity of a municipal ordinance of the town of Bessemer, forbidding "the having or keeping in storage or deposit of intoxicating liquors in or at any place where any drinks or beverages are sold or kept for sale." At that time Alabama had not enacted any statute limiting the quantity that any citizen might purchase or possess for his own use, and the court was dealing also with a municipal ordinance.

Judge Sayre first laid down the proposition that intoxicating liquors were property, a proposition that no one had ever disputed. The ordinance did not deprive the owner of liquors of his property, but only restricted him as to one place in respect to the point or place at which he might keep or store said liquors. In the opinion he laid emphasis on the fact that "the ordinance in question makes an offense against the municipality of those acts which are not denounced by the law of the state." Hence it would seem that if the same provision had been contained in a state statute it would have been considered from a different standpoint.

In view of this case, it should be studied in connection with the Georgia case of Henderson vs. Heyward, 109 Ga., 373, 47 L. R. A., 366, 77 Am. St. Rep., 384. That case also dealt with a municipal ordinance and it was held that under the general welfare clause of its charter, the city had no authority to pass an ordinance making penal the buying of alcoholic liquor since that policy had

never been adopted by the state legislation. In that case Judge Cobb said:

> "It may be that the state would have the right to prohibit the purchase of whiskey; that the state has a right to prohibit absolutely the sale of whiskey is no longer an open question either in this court or the Supreme Court of the United States."

And furthermore,

> "It may be contended with great force that if the state, notwithstanding its recognized property right in alcoholic liquors, can under its police power entirely destroy the right of the owner of said liquors to sell or dispose of the same within the limits of the state, which would in some instances be a practical confiscation of the property, it has the power to declare that no person shall by purchase come into possession of such property within the limits of the state. Laws prohibiting the sale of whiskey are upheld as constitutional upon the ground that its sale is against the best interests of the public at large, and is a business which, if not inherently evil, is of such a nature that its presence is a constant menace to the peace and good order of society, as well as the welfare of the individuals. **If this be true,** it would seem to follow that the state might enact any law which would effectually prohibit the traffic. A law prohibiting the sale would if effectually enforced, prohibit the buying; and so also the prohibition of the purchase would likewise prohibit the sale. The prohibition of the sale, therefore, puts a ban upon the entire traffic. Of course, a law making penal the sale would not, without more, make penal the buying; but the practical effect of such a law if enforced would be to prohibit the buying. It would seem to follow, therefore, that the state might go further than it has already gone, and make penal the buying."

Making this concession, the court said, however, that a municipal corporation could not without express legislative authority make penal the buying of alcoholic liquors from one lawfully authorized to sell the same.

It may be interesting to note that since the decision of the Eidge vs. Bessemer case the Supreme Court of Alabama in the Fuller prohibition law of August 25, 1909, Section 16 thereof) has enacted a section as follows:

> "That it shall be unlawful for any person, firm or corporation engaged in the business of selling beverages to keep or store on the premises where said beverage business is conducted any prohibited liquors or beverages, the sale, offering for sale or other disposition of which is prohibited by the laws of Alabama, and any person so violating this section shall be guilty of a misdemeanor; and this section is enacted to prevent evasions of the law and to remove the opportunity of evading the law by selling prohibited beverages under cover of legitimate beverage business."

(b) One of the authorities cited by Judge Sayre to the effect that intoxicating liquors is property, was the case of Preston vs. Drew, 33 Me., 558, 54 Am. Dec., 639, in which the court said:

> "When a person is deprived of the possession of his property without lawful authority or right, he is injured in his property. The state, by its legislative enactments, operating prospectively, may determine that articles injurious to the public health or morals shall not constitute property within its jurisdiction.
>
> "It may come to the conclusion that spirituous liquors, when used as a beverage, are productive of a great variety of ills and evils, to the people, both in their individual and in their associate relations; that the least use of them for such purpose is injurious, and suited to produce by greater use, serious injury to the comfort, morals, and health; that the common use of them for such purpose operates to diminish the productiveness of labor; to injure health; to impose upon the people additional and unnecessary burdens; to produce waste of time and of property; to introduce disorder and disobedience to law; to disturb the peace, and to multiply the crimes of every grade. Such conclusions would be justified by the experience and history of man. If a

legislature should declare that no person should acquire any property in them for such purpose there would be no occasion for complaint that it had violated any provision of the Constitution."

(c) In the Bessemer case, Judge Sayre admitted that the ordinance could have been upheld if it sustained "some reasonable relation to the prohibition law in the way of preventing evasions of that law by trick, artifice or subterfuge, under guise of which that law is violated." He then said it had no such relation.

It is submitted that the reasoning of Judge McClellan's dissenting opinion and that of the Mississippi court in the case of the State vs. Phillips, supra, is overwhelming against the correctness of Judge Sayre's holding.

His holding, which was that of four out of seven judges is also shown to be contrary to the cases cited by the Mississippi court on page 654, 67 Sou. Rep., to wit:

Selma vs. Brewer, 9 Cal. App., 70, 98 Pac., 61.
Charleston vs. Heisembrittle, 2 McMul., 233.
State vs. Clark, 28 N. H., 176, 61 Am. Dec., 611.
Cohen vs. State (7 Ga. App., 5), 65 S. E., 1096.
Easley v. Pegg, 63 S. C., 98, 41 S. E., 18.
Wright v. Macon, 5 Ga. App., 750, 64 S. E., 807.

The holding is also against several rulings made by the Supreme Court of the United States, wherein it is declared "it does not follow that because a transaction separately considered is inocuous it may not be included in a prohibition the scope of which is regarded as essential in the **legislative judgment** to accomplish a purpose within the admitted power of the government."

Purity Ex. & T. Co. vs. Lynch, 226 U. S., 192, 57 L. ed., 184, 187.
Booth vs. Ill., 184 U. S., 425, 46 L. ed., 623.
Otis vs. Parker, 187 U. S., 606, 47 L. ed., 323.
A. Shin. vs. Whitman, 198 U. S., 500, 504, 49 L. ed., 1142.
Murphy vs. Calif., 225 U. S., 623, 56 L. ed., 1229.
Patsone vs. Penn., 232 U. S., 138, 58 L. ed., 539.

(d) In Williams vs. State, 179 Ala., 50, the constitutionality of a statute was sustained, which made it "unlawful for any person, firm or corporation, whether a common carrier or not, to convey or transport over or along any public street or highway any of such prohibited liquors for another," which liquors included whiskey, beer, wine, rum, and gin, and other intoxicants.

The case of Eidge vs. Bessemer, 164 Ala., 599, was cited as authority against the statute, and Judge Sayre said:

> "Attention to the question there presented for review will disclose the fact that as against **a municipal ordinance** which was construed as prohibiting the keeping of intoxicating liquors for the personal use of the keeper, or rather perhaps as based upon a principle which involved the result, we endeavored to state some reservations in favor of the property rights and personal liberty of the individual with which the legislature of the state **had made no attempt to interfere.**"

It will thus be seen that this utterance is directly in line with the view of the Georgia court in the case of Henderson vs. Heyward, 109 Ga., 373, 47 L. R. A., 366.

Again he says:

> "The object of the decision was to develop a statement of the right of persons in this state, **under existing conditions,** to keep liquors for their own use, to affirm the invalidity of **municipal ordinances** so broadly phrased as to deny that right."

The existing conditions to which he referred were the fact that under the existing legislation no law had been enacted forbidding the citizen to keep liquors for his own use anywhere.

He then said that an "inhibition against the carriage of liquors for delivery to another may be held to be within the legislative competency without a further con-

struction of those already narrow limits to which personal and property rights in respect to use and ownership of intoxicants has been confined by the very general agreement of the courts."

It is obvious here that in speaking of "already narrow limits" the judge did not recognize as correct, the broad and unlimited view of the right of the individual taken by the Court of Appeals of Kentucky under the terms of the Kentucky Constitution, or even under its view of the inalienable rights of man in his natural state and state of society. With the light thrown upon the Bessener case by Judge Sayre's opinion in Williams v. State, it is very clear that it cannot be said that Eidge v. Bess. is any authority for the proposition that in West Virginia a citizen has a constitutional right to own and possess unlimited quantities of liquor for his own use, nor that the Alabama case is at all in accord with the ruling in the Kentucky cases.

The argument of the appellant against the West Virginia law is based upon the false presumption that a citizen has a constitutional right to buy or have liquor shipped to him for his personal use. Unless there is some specific provision in the Constitution of the state which guarantees to its citizenship this right, then there is no right. The following propositions are well settled:

There is no inherent right in a citizen to sell intoxicating liquor as a beverage for personal use, as was held in Crowley vs. Christensen, 137 U. S., 86. No one has any constitutional right to manufacture liquor for his own use. This was settled in the case of Mugler vs. Kansas, 123 U. S., 623. No one has any constitutional right to have a solicitor offer to sell him intoxicating liquors for his own personal use from outside of the state. Even

though the interstate common carrier brings the liquor to him. Delameter vs. State, 205 U. S., 93.

If a citizen has no constitutional right to manufacture liquor for his own use, or to have it sold, furnished or given to him for his own use, then it logically follows that he has no constitutional right to have in his possession, or use, a beverage which the law prohibits. In the brief in case No. 271, which we understand according to the motion granted is to be considered in connection with this case, we have given reasons on pages 20 to 28 why even in a state like Kentucky a citizen has no constitutional right to receive or possess intoxicating liquors except as provided by law. It certainly needs no extended argument to prove that the purpose of all prohibitory legislation is to decrease or prevent the use of intoxicating liquors as a beverage in the only effective way by which the government can deal with this recognized evil.

It is the function of government to deal with the acts of citizens in relation to other citizens. If the use of a certain commodity by a citizen is clearly injurious to society, then the government may step in and prohibit the use of such commodity. But the most effective way for the government to deal with these evils is to prohibit the means by which the individual receives or comes into possession of the injurious article or beverage. Consequently, laws are framed to prohibit the sale, furnishing, distribution or shipment of liquor to individuals in territory where such acts are prohibited. In each of these localities where these transactions are prohibited, individuals might want to secure the intoxicating liquor for their own personal use, but the courts have uniformily sustained the legislation referred to as to sale, furnishing and distribution of liquor and also intrastate ship-

ments of liquor into dry territory in violation of a state law.

The liquor interests have for years tried to confuse the people and the courts by claiming that there was no intention to interfere with the consumption, or use, of liquor because the law did not prohibit the buying or use of liquor. They well know that when the legislature prohibits the use, it makes it practically impossible to enforce the law.

On page 4 of the liquor dealers' first campaign document against prohibition this year, entitled, "Ohio Home Rule Almanac," we find this significant statement:

> "The purchase and consumption of liquor should also be made a crime and every man who drinks should be punished. The Prohibitionist should not hesitate to go where his logic takes him."

If the liquor dealers' program prohibiting the liquor traffic was accepted in framing laws, we would have an anomalous situation, namely, a law with no witnesses available to prove its violation. Those opposed to the liquor traffic have for years told the liquor interests that they would agree to the law preventing the purchase of liquor, providing the state's witnesses should be immune from prosecution when they testified against the liquor dealer. They have persistently opposed the proposition. If the state makes the purchase or consumption of liquor an offense, then the witness who takes the stand admits his own guilt and consequently no witness could be secured for the prosecution. If the consumption of liquor was made an offense, the liquor dealer would deny that the liquor sold was intoxicating and any one who tasted it or consumed it, and gave testimony concerning the fact in question, would be a criminal. The government deals

with this evil in the only practical way it can do so, namely, by prohibiting the means through which the individual secures the beverage, which is injurious to the purchaser and ultimately to society itself.

The Supreme Court of Iowa said, Our House vs. State, 4 Freem, Iowa, 172:

> "The statute is intended as a great public benefit. It seeks to abolish a general and growing evil which is having a most degrading effect upon the moral and physical condition of our race. It seeks to keep men from the common use of these intoxicating and poisonous beverages which so frequently lead to ruin of property, character and health and are proved to be the leading incentive to crime. It seeks to promote the general welfare by prohibiting an excessive vice which is doing more to disqualify men for self government than all other influences combined."

The court construed the purpose of the law correctly in this case. It was to prevent the common use of intoxicating liquor although the law only prohibited the sale of liquor, or the place where the liquor was sold.

This alleged right of a citizen to secure or buy liquor is not sustained by court decisions or constitutional provision. As the Supreme Court of Illinois said in Goddard vs. Jacksonville, 15 Ill., 589:

> "When we defend the sale of liquor for the sake of tippling, we surely draw our arguments from our appetites, not our reasoning, observations and experience."

In Kentucky because of certain provisions in their state constitution the Court of Appeals have held that there is a constitutional right in that state to possess liquor for one's own use. We have set forth the reasons in the brief in case No. 271 why the Court of Appeals have not construed their Constitution correctly. Grant-

ing for the moment that they have construed it correctly, it sheds no light upon the situation in a state like West Virginia which has no limitation in its Constitution and which prohibits in the Constitution itself the manufacture and sale of intoxicating liquor for beverage purposes. The power to enact this legislation prohibiting the liquor traffic carries with it the power to enact legislation to make it effective.

State vs. Frederickson, 101 Me., p. 37.
Feibelman vs. State, 310 Ala., 132.
Pennell vs. State, 123 N. W. Rep., ——.
State vs. Walder, 83 O. S., 68.

In addition to the above authority, there is ample justification for the enactment of the state law in question in the police power of the State of West Virginia. There has been no limitation placed upon this power by the Constitution of that state. Any law which protects the public health and the public morals is not in contravention with the specific provision of the Constitution of that state, or the United States, is valid.

The law which makes the place of delivery the place of sale is a reasonable exercise of the police power. It is a much needed if not necessary police regulation to deal effectively with the outlawed liquor traffic. The courts of the different states and of the United States have decided that the liquor traffic is fraught with so much of evil and misery to society, it has no inherent right to exist. If this be true of a traffic which has not been outlawed, how much more so should it be of an outlawed traffic. Certainly the government should not lend its aid in protecting a traffic which the legislative power of the state or the nation has prohibited.

The United States Circuit Court of Appeals, Vol. 219, p. 794, summed up the situation on this point as follows:

> "There is nothing in the amendment of the State Constitution that takes away by implication this power of the Legislature to provide that the place of delivery shall be the place of sale. It is true that the constitutional amendment prohibits 'the manufacture, sale and keeping for sale' of liquors, but it does not indicate a purpose to deprive the legislature of the power to determine what shall be considered the place of sale. Even if it be assumed that the framers of the amendant, in prohibiting the sale of liquor, had in view the general common law rule and the sale was to be made considered made out of the state on delivery to the carrier and intended to incorporate that conception of a sale into the prohibition of the organic law of the state as a permanent state policy, that by no means implies an intention to take from the legislature the power to make other regulations and restrictions to be conveniently altered or added to or repealed from time to time as circumstances might require, but not considered proper to be imbedded in the Constitution as a permanent law of the state. This obvious and general principle was applied to constitutional and statutory provisions as to the liquor traffic in State vs. Hooker (Okla.), 98 Pac., 964."

IS THE WEBB-KENYON LAW CONSTITUTIONAL?

The vital question in this case is, Has Congress power under the Constitution to enact such legislation as is now under consideration?

It is well at the outset of this investigation to inquire what power over commerce Congress has vested in it by the Constitution, and to what extent the courts have said this power goes. The sole provision of the Constitution prescribing a rule relative to interstate commerce is that Congress shall have power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

This clause has been before the Supreme Court many times and we have not been able to find where the court has placed any limit upon it. In the early case, Gibbons vs. Ogden, 9 Wheat., 1, 6 L. Ed., 77, Chief Justice Marshall, speaking for the court, said: 188 U.S. 356

> "In this connection it must not be forgotten that the power of Congress to regulate commerce among the states is plenary, is complete in itself, and is subject to no limitations except such as may be found in the constitution itself. What provision in that instrument can be regarded as limiting the exercise of the power granted? What clause can be cited which, in any degree, countenances the suggestion that one may, of right, carry, or cause to be carried, from one state to another, that which will harm the public morals? We cannot think of any clause of that instrument that could possibly be invoked by those who assert their right to send lottery tickets from state to state except the one providing that no person shall be deprived of his liberty without due process of law."

In Buttsfield v. Stranahan, 192 U. S., 470; 48 L. Ed., 525, the court said:

> "The power to regulate commerce with foreign nations is expressly conferred upon Congress, and, being an enumerated power, is complete in itself, acknowledging no limitations other than prescribed in the constitution."

In the Rehrer case, 140 U. S., 545; 35 L. Ed., 572, the court in passing upon the Wilson Act, said on this subject:

> "The Constitution does not provide that interstate commerce shall be free, but by the grant of this exclusive power to regulate it, it was left free except as Congress might impose restraint."

In the Northern Securities case, 193 U. S., 34; 48 L. Ed., 679, it is said:

> "By express words of the Constitution, Congress has power 'to regulate commerce with foreign nations and among the several states and with the Indian tribes.' In view of the numerous decisions of the court, there ought not at this day, be any doubt as to the scope of such power. In some circumstances regulation may properly take the form and have the effect of prohibition."

The latest pronouncement is in the opinion of the court in the "White Slave" case, Hoke vs. United States, 227 U. S., 308; 57 L. Ed., ——, 43 L. R. A. (N. S.), 906. In this opinion, the court, speaking through Mr. Justice McKenna, says:

> "By express words of the Constitution, Congress has power 'to regulate commerce with foreign nations and among the several states and among the Indian tribes.' In view of the numerous decisions of this court, there ought not, at this day, to be any doubt as to the scope of such power. In some circumstances, regulation may properly take the form and have the effect of prohibition."

In Frisbie vs. U. S., 157 U. S., 160; 39 L. Ed., 657, the court held that the law forbidding the taking of more than $10.00 compensation for prosecuting a pension claim is not unconstitutional in that it interfered with the price of labor and the freedom of contract, because the whole subject of pensions and the regulations as to their prosecution is within the control of Congress.

If Congress has entire power in the regulation of commerce between the several states, it is difficult to see why it can not enact the law under consideration in the case at bar.

All regulation involves partial and limited prohibition, and the Supreme Court of the United States has repeat-

edly upheld regulations of interstate trade which involved partial and limited prohibitions of such trade. Wilkerson vs. Rehrer, 140 U. S., 545; 35 L. Ed., 572; Champion vs. Ames (Lottery Case), 188 U. S., 321; 47 L. Ed., 492; Northern Securities Co. vs. United States, 193 U. S., 197; 48 L. Ed., 679; St. Louis vs. Western U. Tel. Co., 149 U. S., 465; 37 L. Ed., 810; N. Y., N. H. & H. R. Co. vs. Interstate Commerce Commission, 200 U. S., 361; 50 L. Ed., 515.

The power to regulate commerce between the several states is given in the same words of the Constitution which confer power to regulate commerce with foreign nations and with Indian tribes; and it has been held again and again that, with respect to the other two forms of commerce, the power to regulate implies the power absolutely to prohibit, in the discretion of Congress. U. S. vs. Holliday, 3 Wall., 407; 18 L. Ed., 182; U. S. vs. Marigold, 9 How., 560; 13 L. Ed., 257, 260; U. S. vs. 43 Gallons of Whiskey, 93 U. S., 188, -96; 23 L. Ed., 846, 847; U. S. vs. Le Bris, 121 U. S., 279; 30 L. Ed., 946; Buttsfield vs. Stranahan, 192 U. S., 470; 48 L. Ed., 525.

We have already said that the power to regulate interstate commerce is vested solely in Congress, "is plenary, is complete in itself, and is subject to no limitations except such as may be found in the Constitution itself." Champion vs. Ames, supra.

The Wilson act of 1890, providing that intoxicating liquors transported into any state or territory should upon arrival therein be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers, was legislation strikingly analogous in principle to the Webb-Kenyon law. Prior to the enactment of the Wilson Act the case Leisey vs. Hardin,

135 U. S., 108; 34 L. Ed., 132, had held that an affirmative action by Congress, permitting the same is necessary before a state is free to exercise its police powers relative to an article of interstate commerce. In that case there is a recognition of the determining power of Congress whether interstate commerce shall be free or shall be subject to restriction.

In the last cited case the court says:

> "And while by virtue of its jurisdiction over persons and property within its limits, a state may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the state, unless placed there by congressional action."

> As the grant of the power to regulate commerce among the states, so far as one system is required, is exclusive, the states can not exercise that power without the assent of Congress.

> "It is not for Congress to determine what measures a state may properly adopt as appropriate and needful for the protection of public morals, the public health or the public safety; but notwithstanding it is not vested with supervisory power over matters of local administration, the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the state in dealing with imported articles of trade within its limits which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action."

In speaking of the mingling of the imported article with the common mass of property in the state, the court continues:

> "Up to that point of time, we hold that in the absence of congressional permission to do so, the

> state had no power to interfere by seizure, or any other action in prohibition of importation and sale by the foreign and non-resident importer."

Again, in recognizing the power of Congress absolutely over interstate commerce, the court says:

> "To concede to a state the power to exclude, directly or indirectly, articles so situated, without congressional permission, is to concede to a majority of the people of a state, represented in the state legislature, the power to regulate commercial intercourse between the states."

The same objection is raised to the Webb-Kenyon law which was urged against the Wilson Act. The objection resolves itself into this: Can Congress by appropriate legislation remove the impediment now existing which interferes with the full exercise by the state of their police powers?

The Wilson Act made all intoxicating liquors subject to the laws of the states upon "arrival." This, the Supreme Court, in Rhodes vs. Iowa, 170 U. S., 412; 42 L. Ed., 1088, very properly construed to mean when the same had come into the hands of the consignee. In the Rehrer case, 140 U. S., 545; 35 L. Ed., 572, the court, in recognizing the necessity for congressional action to remove the impediment imposed by the interstate commerce law and allowing the police powers of the state to attach to intoxicating liquors upon their arrival in the state, said:

> "By the adoption of the Constitution the ability of the several states to act upon the matter solely in accordance with their own will was extinguished and the legislative will of the General Government substituted. * * *
>
> "But this furnishes no support to the position that Congress could not, in the exercise of the discretion

reposed in it, concluding that the common interest did not require entire freedom in the traffic in ardent spirits, enact the law in question. In doing so, Congress has not attempted to delegate the power to regulate commerce or to exercise any power reserved to the states, or to grant a power not possessed by the states, or to adopt state laws. It has taken its own course and made its own regulation, applying to these subjects of interstate commerce one common rule whose uniformity is not affected by the variations in state laws dealing with such property—

"No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so. * * *"

In U. S. vs. Holliday, 3 Wall, 409; 18 L. Ed., 182, we find a striking illustration, as well as a valuable precedent showing the extent of the powers of congress over "commerce with foreign nations" and among the several states and with the Indian tribes." The Holliday case arose as follows: Holliday was indicted in Gratiot county, Michigan, for selling liquor to an Indian in charge of an agent. The county was not Indian county, nor did it even have an Indian reservation in it. It was contended that the sale of liquor to an Indian or to any other person within the county was a matter of state policy, for the state to decide for itself with which Congress had nothing to do. The court, however, held that the power of Congress was broad enough to cover the act thus assailed. Here the Supreme court upheld the validity of a statute which absolutely prohibited the sale of intoxicants to Indians as a valid exercise of the constitutional power now under discussion.

In Hoke vs. U. S., 227 U. S., 308; 57 L. Ed., ——; 43 L. R. A. (N. S.), 906, the white slave act was under consid-

eration and was assailed as being unconstitutional in that it conflicts with the reserved police powers of the states to punish prostitution and immorality. In discussing this assignment of error, the court say:

> "Plaintiffs in error admit that the states may control the immoralities of its citizens. Indeed this is their chief insistence; and they especially condemn the act under review as a subterfuge and an attempt to interfere with the police powers of the states to regulate the morals of their citizens, and asserts that it is in consequence an invasion of the reversed powers of the states. There is unquestionably a control in the states over the morals of their citizens, and it may be admitted, it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the states, but there is a domain which the states can not reach and over which congress alone has power; and if such power be exerted to control what the states cannot, it is an argument for—not against—its legality."

The above quotation illustrates the intent of Congress in passing the Webb-Kenyon act, as well as the subterfuges of those who opposed this kind of legislation. In the act under review, Congress does what the "states cannot;" that is, removes the interstate commerce bar to the free exercise of its police powers by the state.

CONGRESS HAS POWER TO PROHIBIT INTERSTATE COMMERCE IN DELETERIOUS COMMODITIES.

It is a well settled proposition of law that Congress has power to eliminate from interstate commerce all deleterious commodities, or acts.

Champion vs. Ames, 88 U. S., 356.
Hoke vs. State, 227 U. S., 309.

That intoxicating liquor is a deleterious commodity,

See Crowley vs. Christensen, 137 U. S., 86.
Mugler vs. Kansas, 123 U. S., 623.

POWER TO PROHIBIT THE TRAFFIC FROM INTERSTATE COMMERCE INCLUDES AUTHORITY TO DO LESS.

"Whenever a state has authority to entirely prohibit the sale or use of any commodity, it carries with it the power to do less than that which it is authorized." Rippey vs. Texas, 193 U. S., 504. "It is a question of the power of the state as a whole." Mo. vs. Dockery, 101 U. S., 165. "But the state has power to prohibit the sale of intoxicating liquor altogether, if it sees fit." Mugler vs. Kansas, 123 U. S., 623. "That being so, it has power to prohibit it conditionally. It is true the greater does not always include the less * * but in general the rule holds good, it does here." 194 U.S. 445

Congress has the power over interstate commerce that the state has over the liquor traffic. It is admitted that Congress may prohibit entirely interstate commerce in intoxicating liquor. That being true, it has a right to do less than entirely prohibit. Congress has drawn the line on interstate shipments of liquor in violation of the state law. Such a limitation upon interstate commerce is founded on good reason and enlightened conscience.

State vs. U. S. Express Co., 145 N. W., 458.
State vs. Doe, 139 Pac., 1170.
American Express Co. vs. Beer, 65 Sou., 581.
Southern Express Co. vs. State, 66 Southern, 122.
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In the case of U. S. vs. Marigold, 9 Howard, 560, Justice Daniel in speaking for the court said:

"Under the commerce clause, every subject within the legitimate sphere of commercial regulation may be partially or wholly excluded. The power of ex-

clusion may operate on any and every subject of commerce to which the legislative expression may apply."

Under this authority it is clear that Congress, whose power is plenary, may regulate interstate traffic in intoxicating liquors to the extent that such traffic shall not embarrass and hinder the state in the exercise of its police powers.

It is true the restriction or the limitation in the Webb-Kenyon law does not go as far as Congress was authorized to go, but as Justice Daniel said, "every subject within the legislative sphere of commercial regulation may be partially or wholly excluded."

POWER TO PROHIBIT ARTICLES FROM INTERSTATE COMMERCE ILLUSTRATED.

The power of Congress to regulate interstate commerce as provided in Article 1, Section 8, Clauses 3 and 18, is illustrated by the enactment of many laws which prohibit entirely or partially certain acts. The shipment and sale of intoxicating liquos to the Indians is prohibited. U. S. vs. 43 Gallons of Whiskey, 93 U. S., 188.

The interstate transportation of infected cattle is prohibited. Reed vs. Colorado, 189 U. S., 137.

Congress has power to prohibit the importation of goods from foreign countries. Southern Securities Litigation 193 U. S., 334.

Adulterated or misbranded foods are prohibited as subject matters of interstate commerce. Hippolite Egg Co. vs. U. S., 220 U. S., 45.

Obscene literature is prohibited from interstate commerce. U. S. vs. Popper, 98 Red., 423.

CONGRESS HAS POWER TO ENACT THE LAW IN QUESTION AS A POLICE REGULATION.

Congress has authority to enact certain legislation having the quality of police regulations. The states have such power beyond the peradventure of a doubt. Congress has such power in certain instances and especially in the enactment of interstate commerce law, because the states delegated police power to Congress to act on this subject.

In the Rehrer case, 140 U. S., 345, it was said in sustaining the Wilson act, that is was:

> "Enacted in the exercise of its police powers and is constitutional and valid."

The lottery case above referred to holds that the Wilson act was sustained in the Rahrer case:

> "As a valid exercise of the power of Congress to regulate commerce among the states."

In the Addyson case (175 U. S., 211), the power of Congress is affirmed to regulate interstate commerce to any substantial extent. In the lottery case the power to regulate is put to the essential test whether the legislation is for the purpose of guarding the morals of the people of the nation or involves that purpose.

In Phalens case (8 How., 161, 168), it is observed "that the suppression of nuisances, injurious to the public health or morality, is among the most important duties of the government."

In the case of Hoke v. State, 227 U. S., 309: Syllabus:

> "Congress may adopt not only the necessary, but the convenient means necessary to exercise its power

over a subject completely within its power, and such means may have the quality of police regulation."

The law in question is not only a convenient but a necessary means for the enforcement of the law against a traffic which the Supreme Court in the 137 U. S., 86, characterized as "a source of crime and misery to society."

THERE IS THE SAME REASON FOR SUSTAINING A LAW TO ELIMINATE OR RESTRICT SHIPMENTS OF LIQUOR BY INTERSTATE COMMERCE THAT THERE IS FOR SUSTAINING A LAW PROHIBITING INTERSTATE TRAFFIC IN LOTTERY TICKETS.

In deciding the case of Champion vs. Ames, 188 U. S., 356, the Supreme Court held:

> "It would not permit the declared policy of the state which sought to protect their people against the mischiefs of the lottery business to be overthrown or disregarded by the agency of interstate commerce."

The lottery business was considered by the people in many of the states a recognized evil and prohibited, just as the liquor traffic is prohibited now in many of the states. Those who wanted to make money out of the sale of lottery tickets resorted to the express companies and the U. S. mails to carry on a business which had been outlawed in the states. The courts properly held that the states had a right to protect the public morals of their citizens, and that interstate commerce could not be used as an agency to overthrow or disregard the policies of the states.

The evil complained of at the time this decision was rendered was no more far reaching, or dangerous to the public that the liquor traffic is today. On pages 45 to 57 of the brief filed in case No. 271, we have cited a few of the many authorities which are available to show the inherent evil effect of the consumption of intoxicating liquor and the decisions of the courts concerning it.

The Supreme Court of Iowa in the case of Santo vs. State, 2 Iowa, 165, said:

> "That the use of intoxicating liquor as a drink is the cause of more want, pauperism, suffering and crime and public expense than any other cause and perhaps than all other causes combined."

The court did not say that the sale of liquor was the cause of more want and pauperism, but the use of liquor was the cause of want, pauperism, crime and public expense. The statute prevented the use of liquor although its provisions applied only to the sale and keeping of a place where liquor was sold. Comparisons, of course, are difficult to make accurately but in view of the present tendency in our country and in foreign nations to try and eliminate this great evil, it is certainly within the bounds of a conservative statement to say that the lottery business was no greater evil when it was entirely eliminated from interstate commerce than the liquor traffic is today.

THE LAW IS NOT A DELEGATION OF LEGISLATIVE POWER.

The law in question does not attempt to delegate legislative power to the states. It simply removes an impediment to the enforcement of a law enacted by the states under its police power.

The Supreme Court of Iowa in the State vs. U. S. Express Co., 145 N. W. Rep., 451, has rendered a very able

opinion on this question. An extended quotation from this decision will be found on pages 61 to 65 of brief in case No. 271.

CASES CITED BY APPELLANT.

Appellant cites on pages 39, 50, 51 and 52 of their brief the case of Van Winkle vs. State as authority for the proposition that the Webb-Kenyon law does not authorize the application of a state statute to an interstate shipment for personal use. The substance of Judge Wooley's opinion is set forth in very prominent type on page 52 as follows:

> "There is thus presented a case of the shipment of liquor for lawful purposes, in violation of a state statute prohibiting the shipment of liquor for any purpose, enacted under authority of the federal statute prohibiting the shipment of liquor for an unlawful purpose."

The fallacy in this statement is in construing the meaning of the Webb-Kenyon Act. Judge Woolley assumes that the Webb-Kenyon law applies only to shipments of liquor which are used by the consignee in violation of law. The law itself says:

> "The shipment or transportation in any manner by any means whatsoever of * * * intoxicating liquor from one state * * * to another state * * * **which said * * * intoxicating liquor is intended by any person interested therein to be received, possessed or** in any manner used **in violation of any law of such state is hereby prohibited.**"

The decision of the Delaware court entirely ignores the ordinary meaning of the words "by any person interested therein to be received, possessed," etc. The Webb law is broader than the construction placed upon it by

Judge Woolley. It prohibits the shipment of liquor from one state into another state when such liquor is intended by any person interested therein to be received, or possessed in violation of law. If the state desires to make the receipt, or deliverey of intoxicating liquor in a state a violation of law, it comes clearly within the language of theWebb-Kenyon Act.

The basis of the error in this decision is the assumption that these laws prohibiting the sale, shipment, etc., of intoxicating liquor were not intended to prevent the use of liquor to the extent covered by the law. We have discussed on pages 20 to 29, in brief No. 271, this whole proposition as to the right of the individual to secure or possess liquor for his own personal use.

We submit that the decision of the General Sessions Court in this case of State vs. VanWinkle, 88 Atl., 807, represents the better reasoning. Likewise State vs. Grier, 88 Atl., 579; Express Co. vs. Beer, 65 Southern, 115; Atkinson vs. Express Co., 48 L. R. A. (N. S.), 349.

QUOTATIONS FROM RECORDS.

The quotations on pages 41 to 43 of the brief for the Adams Express Co., containing statements by members of Congress in reference to the meaning of the Webb-Kenyon Law, even if they could be looked to, do not support the conclusion which said brief seeks to draw therefrom. The contention no doubt was that the Webb-Kenyon law by its own terms prohibited shipment of liquor for a citizen's own use, and hence the opponents of the bill were seeking to prevent its enactment. It was perfectly correct to say that no such effect could be given to the bill and that the result would depend upon the

character of statutes that the states might enact. If anybody says that the act was to be confined simply to shipments of liquor for sale, it is so manifestly erroneous in view of the expressed terms of the act, that no regard could be given to such statements. The act by its terms plainly includes "receipt, possession, sale, or other use, of liquors in violation of a state law." For instance, this view is well expressed in Mr. Rottenberry's statement, page 43 of the brief, "it does not interfere with the shipment or reception of liquors for lawful consumption or for any purpose not prohibited by state law."

Senator Kenyon also said practically the same thing, page 43, of brief: "If liquors are shipped with the intent of being used by the person for his own personal use and in no way to violate the law of the state, then they are subjects of commerce."

He meant simply that Congress was not constructing a law which by its own force, contrary to the wishes of the state, would prevent personal use or shipment for personal use.

And Senator Paynter, page 44 of brief of appellant, was correct in saying that the bill itself would not stop the purchase of liquor for personal use, but that was quite a different thing from saying that no statute could prevent the purchase or shipment of liquor for personal use. If a state law should be enacted and it should be held to be valid by the state courts, the Webb-Kenyon bill would authorize the enforcement of such state statute, and would exclude shipment of such liquor intended to violatate said state statute.

Appellant's brief cites cases from Tennessee, South Carolina, Delaware and Texas, and also the Alabama case of Southern Express Co. vs. State, 66 Sou. Rep., 115, as

alleged authority for his contention that the Webb-Kenyon law does not authorize the application of a state statute to an interstate shipment for personal use; but, we respectfully submit that the cases have no application, because they did not involve the validity of any state law prohibiting the possession or receipt of liquor for personal use.

Of course, it is true that if under the state law an interstate shipment is lawful, then the Webb-Kenyon law does not apply; but this is far from saying that it would not apply if the possession and receipt of liquor by the state law was prohibited.

Appellant's brief asserts in respect to the Alabama case on page 58 as follows:

> "The court holds that no law of the state of Alabama prevents or can under the Webb-Kenyon law prevent the delivery by a carrier of liquors intended for personal use."

This is a gross error of fact. At that time, there was no law in the state of Alabama preventing, or seeking to prevent or restrict the delivery by carriers of liquor intended for personal use. Hence no question arose as to whether the state could enact a law containing such restriction or provision, and the court did not undertake to anticipate what the legislature might do in the future. There is nothing whatever in the opinion to justify the statement that the court held the legislature could not enact a restrictive law upon that subject.

In connection with the cases from North Carolina cited in appellant's brief, see also the following:

State vs. S. A. L. Ry., N. C. 84, S. E. 283.

The Tennessee case of Palmer vs. Southern Express Co., 165 S. W., 236, did not involve any state law pur-

porting to prohibit the acceptance or possession of liquor for personal use. On the contrary the court showed that by the statutes of Tennessee, a citizent had the right to purchase liquor for his own use and that of his family, and indeed the court said that such purchase for personal use was permitted by the statute in question, meaning thereby the statute under consideration providing for the quantity that might be shipped at one time, and which was the statute assailed as unconstitutional in the pending case. There is an extract from this opinion on page 35 of appellant's brief, the last sentence of the quoted extract stating that "this was a lawful use and indeed permitted by the statute in question," refers not to the Webb-Kenyon act, but to the Tennessee act.

There is another phase of the statute which the Tennessee court emphasized, and that is that although there was a limitation as to the quantity of a single shipment, there was no limitation as to the number of shipments, and hence under the Tennessee statutes, the citizen could secure an unlimited quantity of liquor for his personal use by repeating his orders for shipment. Hence, the court said, that the statute in fixing the quantity of one shipment was but a regulation of commerce. Whether this was correct, we need not inquire, although the Mississippi Court in American Express Co. vs. Beer, 65 Sou., 575, seems to have reached the opposite conclusion. The Tennessee case is no authority, that even in Tennessee the legislature might not enact a statute that would restrict the quantity that might be received by a citizen for his own use or be possessed by him for his own use.

PRESUMPTIONS AS TO CONSTITUTIONALITY.

Statutes are always presumed to be constitutional and this presumption will be indulged in by the courts until the contrary is clearly shown.

In United States vs. Gettysburg Elec. R. Co., 160 U. S., 668; 40 L. Ed., 576, the court speaking through Mr. Justice Peckham said:

> "In examining an act of Congress it has been frequently said that every intendment is in favor of its constitutionality. Such act is presumed to be valid unless its invalidity is plain and apparent; no presumption of invalidity can be indulged in; it must be shown clearly and unmistakably. This rule has been stated and followed by this court from the foundation of the government."

In Brown vs. Walker, 161 U. S., 590; 40 L. Ed., 819, Justice Brown, speaking for the court, says:

> "That the statute can be upheld, if it can be construed in harmony with the fundamental law, will be admitted. Instead of seeking for excuses for holding acts of the legislative power to be void by reason of their conflict with the Constitution, or with certain supposed fundamental principles of civil liberty, the effort should be to reconcile them, if possible, and not hold the law invalid, unless, as was observed by Mr. Chief Justice Marshall in Fletcher vs. Peck, 10 U. S., 88; 3 L. Ed., 162, the 'opposition between the Constitution and the law be such that the judge feels a clear and strong conviction of their incompatibility with each other.' "

In A. T. & S. F. R. Co. vs. Matthews, 174 U. S., 96, 43 L. Ed., 909, Mr. Justice McKenna said:

> "It is also a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and

with the purposes of promoting the interests of the people as a whole, and courts will not lightly hold that an act duly passed by the legislature was one in the enactment of which it transcended its powers."

In United States vs. Harris, 106 U. S., 635; 27 L. Ed., 290, Mr. Justice Woods, speaking for the court, said:

"Proper respect for a co-ordinate branch of the government requires the courts of the United States to give effect to the presumption that Congress will pass no act not within its constitutional power. This presumption should prevail unless the lack of constitutional authority to pass an act in question is clearly demonstrated."

THE DECISIONS OF STATE SUPREME COURTS AND UNITED STATES COURT OF APPEAL HAVE UNIFORMLY SUSTAINED THE CONSTITUTIONALITY OF THE WEBB-KENYON ACT.

Every state Supreme Court which has passed upon the constitutionality of the Webb-Kenyon law has sustained it. The reasoning of the courts in sustaining this law has varied somewhat due to the legislation which was involved in the case. In many of these states there was no law making the place of delivery the place of sale, nor the receipt of liquor or possession of it unlawful. Consequently, the exact question involved in this hearing was not before the court. The cases which have sustained the constitutionality of the law are as follows:

State of West Virginia vs. Adams Express Co., Fed. Rep. No. 4, Vol. 219, April 1, 1915, page 794; American Express Co. vs. Beer (Miss.), 65 So., 115; Ex Parte Peede (Texas), 170 S. W., 749; Van Winkle vs. State (Del.), 91 Atl., 385; State vs. Oregon R. & N. Co., 210 Fed., 378; State vs. Express Co. (Ind.),

145 N. W., 451; State vs. Doe (Kas.), 139 Pac., 1169; Palmer vs. Express Co. (Tenn.), 165 S. W., 236.

The case which meets squarely and conclusively the questions raised in this hearing, is West Virginia vs. Adams Express Co., Fed. Rep., Vol. 219, p. 785. Every point raised by appellant is squarely answered by that decision (quoted on pages 74 to 83 in brief in case 271).

We submit also for the consideration of the Court the concurring opinion of Justice Clark in State vs. Cardwell, 81 S. E. Rep., 632 (see pages 84 to 86 in brief in case 271). These decisions, and others which we have cited, are good authority for these two propositions:

First. The state has authority to enact a law making the place of delivery the place of sale.

Second. The Webb-Kenyon Law is constitutional.

This is a case of vast importance to the people of the United States.

A majority of the people now live in territory where the liquor traffic is prohibited. They will be prevented from enjoying the benefits of the laws which they have adopted if this law is declared invalid.

We respectfully submit that this law "founded on deep reason and enlightened public policy" should be sustained and the writ of error denied.

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